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**EMPLOYMENT ADVISORY COUNCIL
MINUTES**

DATE AND TIME: Thursday, December 20, 2007
1:30 p.m.

PLACE: Department of Workforce Services
140 E 300 S
Room 211A
Salt Lake City, UT

MEMBERS

PRESENT: Kristen Cox, Chair
Chyleen Arbon
Thomas E. Bingham
John S. Chindlund
Greg Diven
James R. Judd
Richard Kingery
Tony Montano
James V. Olsen
Reta Oram
Dan Peay
Mary Catherine Perry
Richard Thorn
John Williams

OTHERS: Bill Starks, DWS
Chris Love, DWS
Bradley Salmond, DWS
Charles Amonett, DWS
Kathy Prettyman, DWS
Jerry Fruin, DWS
John Smith, DWS

WELCOME

Kristen welcomed the members. Introductions were given.

APPROVAL OF SEPTEMBER 7, 2007 MINUTES

On motion by Tony Montano, second by Greg Diven, the September 7, 2007, minutes were approved.

NEW COUNCIL MEMBERSHIP, VACANCIES AND TERMS

Kristen Cox recognized the great contribution that Sen. Ed Mayne made to this Council, he was a dynamic individual with a passion for what he did.

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Kristen Cox welcomed the three new appointees to the Council: Jim Judd, President of AFL/CIO, who is replacing Sen. Mayne on the Council; Richard Kingery, Business Manager & Secretary for International Brotherhood of Electrical Workers, who is replacing Dave Wilson on the Council; and Raylene Ireland (not in attendance), past Executive Director of the Department of Workforce Services and chair of the Employment Advisory Council, who is replacing Lynne Ward on the Council.

PROPOSED EMPLOYMENT SECURITY ACT AMENDMENTS

Bill Starks reviewed the amendments.

HB 21 Employment Security Act Amendments was discussed at the September Interim. The bill clarifies a technical provision that a claimant does not have to report to an employment office to receive benefits and also includes a provision to waive certain filing requirements in the event of a disaster. In the disaster provision, additional language was added at the recommendation of the Workforce Services Interim Committee and to address concerns expressed by the Advisory Council at the September meeting. The changes are on lines 112-119. Bill Starks provided background for this, noting that he attended a disaster preparedness meeting in Dallas that discussed lessons learned from the Katrina disaster. During the Katrina disaster, requiring claimants to file a weekly claim and requiring claimants to register for work while businesses were closed, was problematic. This change provides that the department may waive the work search requirement and/or the weekly filing requirement. This was passed as a committee bill and is sponsored by Rep. Mascaro. Bill Starks thanked Jim Olsen for his input during the committee meeting.

HB 64 Disclosure of Information by the Department of Workforce Services: This bill authorizes the UI Division to disclose information to the Division of Occupations and Professional Licensing (DOPL) for certain purposes. This is to help detect and prevent misclassification of workers. In order for DWS to share UI information with any other state or federal agency, authorization must be in Section 312 of the statute and a written agreement executed.

The legislation was proposed at the Business and Labor Interim and sponsored by Sen. Neuenschwander. It would allow DWS to share information, including the misclassification of workers with DOPL to improve employers' compliance with both divisions. The initial intent was to share information on licensed contractors, since this industry tends to have a relatively large number of misclassified workers. However, it is not limited to contractors, but that's the only one being discussed currently, and will require a written agreement. In the event it proves effective, it could potentially apply to other licensed occupations; DOPL regulates over 50 occupations. The UI Division currently has a very effective information sharing agreement with the state division of Alcohol and Beverage Control (ABC). ABC requires that employers with liquor licenses be in good standing with UI as a condition of licensure. DWS is sensitive to not sharing information unless it has a positive impact on UI. This would still require a written Memorandum of Understanding (MOU). Jim Olsen said over the years, various groups, such as education, have requested that information and many don't have a legitimate

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reason. Typically, we have resisted as a Council. This meets the criteria for sharing that information, which ensures that workers are properly classified and licensed. His organization is comfortable with this change, but is resistant to opening these records up to anybody. Richard Thorn asked if wage information would be included. Bill Starks said that hasn't been ironed out in memorandum. Initially, it was discussed that it would just cover contractors and their accompanying wage database. John Chindlund asked how many organizations have agreements. Bill Starks said that we only planned one at this time with DOPL for contractors' licenses; however, this legislation would allow expansion to other licenses under DOPL. Jim Judd agreed the criteria needs to be related to UI and appropriate to protect the fund. Bill Starks referenced line 115 to 117 of the current statute that states the disclosure will not have a negative effect on employers to report wages or claimants' willingness to file for benefits. This will have a positive impact for UI as we want to cover as many workers for UI as we should. He asked for a vote so he could report back to the Legislature.

Motion: Jim Judd made the motion, and was seconded by Tom Bingham, that Bill Starks report to the Interim that this bill has the approval of the Council. Tom Bingham said the sponsor should understand that the Council is concerned about opening this information up to others, that this is a narrowly carved exception, and we guard it very carefully. The motion was amended to include this language. The motion passed unanimously.

Independent Contractor Database Act: This proposed legislation is a result of several legislative work-group meetings requested from the Business and Labor Interim. Several legislators, including Sen. Mayne, were concerned about employers misclassifying workers as independent contractors, paying unreported cash wages, and the hiring of undocumented workers creating an unfair advantage for some employers. The committee recommended a pilot program to study the problem. It includes design and implementation of a common database to measure the extent of the issue, regulatory compliance, and recommendations to the Legislature of any needed statutory changes. It also creates an Independent Contractor Enforcement Council with membership comprised of the Labor Commission, Tax Commission, Department of Commerce, Public Safety and Workforce Services. The objective is to leverage our limited resources and promote efficient and effective information sharing amongst the executive branch agencies, which would give them a lead for seeking compliance with their respective laws. Bill Starks said Patricia Owens presented this proposal to the Business and Labor Interim and it received a favorable reaction to continue to move forward with possible legislation.

There is language that could create a common definition of an independent contractor vs. employee. Bill Starks said he was concerned if a definition other than ours is adopted. Our definition of employment is fairly broad to cover as many workers under UI as reasonably possible within the framework of federal law and is supported by years of case law. For instance, if the Workers Compensation's definition were adopted, it could potentially weaken our definition of employment. Greg Diven asked if the concern is if independent contractors are actually employees. Bill Starks said there is an increase

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nationally in misclassification of independent contractors. Independent contractors are not subject to the same employment law regulations as employees. The problem of misclassification is not just with contractors, but also in the film and entertainment industry, the mortgage industry, cosmetology industries, and others. Employers support this, as they want a level playing field.

Richard Thorn asked if the database sharing and the independent contractor pieces are different. Bill Starks said they are somewhat inter-related; the Department of Commerce would be the lead agency and would fund the database project from fees that are currently transferred to the general fund. It is possible that the language in HB64 could be changed from the DOPL to the Department of Commerce. He brought that up to the legislative counsel that if Commerce is taking the role on it, they might want to make it broader so that it or one of its divisions could get the information. Richard Thorn said it goes back to the concept that the Council supports information sharing when it is more narrowly defined, so we need to ensure that it is. Jim Olsen has a concern if it is changed from DOPL to Commerce. Richard Thorn said there has been a lot of work on the independent contractor so there might be more than what's on this sheet. Bill Starks said that if they have plans to share our entire wage data, keep in mind that the Tax Commission and the Labor Commission already have access to our wage data, so Commerce is the only one listed here that doesn't have it. Public Safety gets information on a case-by-case basis.

UPDATE ON UI TRUST FUND AND TAX RATES

Bill Starks reviewed the UI Trust Fund charts.

Page 1: Tax rate notices were sent to 70,000 employers and most saw a tax decrease. This is the largest percentage in recent memory, 71 percent, to receive the minimum tax rate, which went down to 1/10 of 1%. The social rate was actually .001966, but because we truncate the fraction after three decimal points on the overall rate, it dropped to .001 for all employers with no benefit costs, which is also the minimum rate. The high benefit cost years are being replaced with low benefit cost years. Almost any large employer will not get the lowest rate, as it likely had benefit costs. The taxable wage base went to \$26,700. Regarding the social cost estimates, the new DWS actuary will begin using more actual data from quarterly reports as it becomes available throughout the year, rather than simply relying on historical data and trends. This should provide better estimations as the year progresses.

Page 2 shows the Average Employer UI Tax rates nationally. Utah is 38th lowest nationally in 2007, and should move to 40th or lower in 2008.

Page 3 shows the past history and future projections of the Trust Fund balance, the minimum and maximum adequate reserve, the reserve factor and the social cost rate, which are all set by statute. The minimum adequate reserve is 17 months and the maximum is 19 months. This was changed from 18 and 24 months in 2000. In 2008 the reserve factor drops to .95 and social cost to .001, and the Trust Fund balance is estimated to go down in future years.

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Page 4 illustrates the UI Trust Fund balance projections graphically. We are above the maximum adequate reserve and that's why the reserve factor dropped.

Page 5 shows benefits and contributions paid.

Page 6 shows benefits and contributions paid. Greg Diven noted that if we go back to 2002 when benefits were four times higher than contributions, it would be problematic. Bill Starks agreed we need a discussion of what constitutes an adequate reserve. In 2000 we reduced the adequate reserve, which was followed by high benefit years. Taxes rose fairly dramatically at a time when employers could least afford increases. This is cyclical and inherent to the current formula and if we keep the same formula, that cycle will return.

PROPOSED LEGISLATION ON UI TAX RATES

The proposed language changes the calculation of social costs by rounding to three decimals and returning the adequate reserve from 17, 19 months to 18, 24 months.

This proposed legislation ensures that the social contribution rate calculation is charged equally among all employers, with or without benefit costs. Currently, the rate is calculated to four decimal places and any fraction thereafter is disregarded. The recommended change is to calculate to four decimal places and round to three decimal places if the fourth decimal place is .0004 or less, or round up to the next higher number if the fourth decimal place is .0005 or more. Bill Starks referenced two sample tax rate notices. Most years, this does not impact many employers, but this year, when the fourth decimal is high (.0019), the effective social tax rate for employers with benefit costs is almost .002 while the rate for employers with no benefit costs is .001. This is because the overall tax rate is calculated only to 3 decimal places and disregarding any remaining fraction the .0009 is dropped.

This proposed legislation changes the definition of the adequate reserve from between 17 to 19 months to between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years. Bill Starks referenced the UI Trust Fund Reserve Factor & Social Cost Calculation chart for rates based on 18,24 months. If we returned to the pre-2000 method (18-24 months), we project the reserve factor would go back to 1.00 in 2009. By doing the rounding, the social cost rate would have been .002 for 2008. The chart doesn't reflect proposed law change to round down and go to three digits for the social costs. If the proposed changes were enacted on both the 18, 24 and social cost calculation, the social cost would go back to .02 next year. Jim Olsen said the pain is when premiums increase when employers are in difficult financial positions. It has been the goal to collect a little more in premiums when the economy is good to level out the peaks and valleys of premium fluctuations. This is preferable to raising premiums 200-300% during periods of high unemployment. He supports all employers having the same social cost and going back to 18,24 months, so there are not such wide variations. Jim Judd agreed any smoothing mechanism to take out fluctuation is an advantage to everyone. Greg Diven said to avoid fluctuation in social costs, it would make sense to go

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to four decimal points. Bill Starks agreed that the more decimal points there are, the more the actual costs are tied to the employers. Four decimal points would be the most fair and accountable, which we can go with too. However, administratively, every employer's rate would change virtually every year and that is something we want to avoid. If the overall rate remains at three decimals we would have approximately 100 different rates where 4 decimals would require approximately 1,000 different rates and the social cost from year to year would likely be within 1 tenth. Greg Diven noted the difference between 1 and 1.9 is major. Bill Starks said it's because we drop, rather than round, the last decimal. Jim Olsen liked the rounding. Jim Judd said it keeps a consistency that is easier for those paying taxes to budget.

Motion: Thomas Bingham made the motion, seconded by Reta Oram, that the changes be approved as proposed. Motion passed unanimously.

Bill Starks said he would find a legislator to sponsor. Jim Olsen said he could help, as this needs to be addressed and not held for another year. He thought Sen. Niederhauser might be able to assist.

ADJOURNMENT

Meeting adjourned at 2:35 pm.